



# KISII UNIVERSITY

## UNIVERSITY EXAMINATIONS

### FIRST YEAR EXAMINATION FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS SECOND SEMESTER, 2021/2022 (FEBRUARY - JUNE, 2022)

#### LLBK 125: CONTRACT LAW II

**STREAM: LLBK 1 S2**

**TIME: 2 HOURS**

**DAY: FRIDAY, 9:00 – 11:00 A.M.**

**DATE: 27/05/2022**

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#### **INSTRUCTIONS**

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

#### **QUESTION ONE**

In *Davis Contractors Ltd vs Fareham UDC* (1956) AC 696, Lord Radcliffe observed as follows:

“...frustration occurs whenever the law recognizes that, without the default of either party a contractual obligation has become incapable of being performed because the circumstances in which the performance is called for would render it a thing radically different from that which was undertaken by the contract. *“Non haec in foederaveni.”* It was not what I promised to do.”

- Explain the doctrine of frustration has established in the English system – anchored on doctrines of equity. (10 marks)
- Discuss with aid of Kenyan case laws, the Kenyan approach to the doctrine of frustration of contracts. (10 marks)

(iii) Discuss the interplay between frustration and the Court's cautious approach not to step in to re-write a contract due to a bad bargain  
(10 marks)

## **QUESTION TWO**

Critically analyse the (i) common law and (ii) equitable principles of mistake as a vitiating factor in contract bringing out clearly the Kenyan court's view of the two approaches to mistake.  
(20 marks)

## **QUESTION THREE**

The general rule is that the performance obligation is strict, so that the contractual obligation must be completely and precisely performed. Discuss the general rule as to performance of contractual obligations and at least two exceptions to this rule bringing forth the justification for discharging a party from performance  
(20 marks)

## **QUESTION FOUR**

Discuss any two equitable remedies available to an aggrieved party in cases of breach of contract. Set out clearly when the Courts would avail the discussed equity remedies.  
(20 marks)

## **QUESTION FIVE**

Discuss the Court's approach to exclusions in contracts under the laws of Kenya as read together with Common Law & Doctrines of Equity. (20 marks)